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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,284	07/12/2002	Kenshu Shimada	09812.0438	3062
22852	7590	12/27/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			RHODE JR, ROBERT E	
			ART UNIT	PAPER NUMBER
			3625	
DATE MAILED: 12/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/070,284	Applicant(s) SHIMADA, KENSU	
	Examiner Rob Rhode	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 5, 7, 10, 13 and 15 - 55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8, 9, 11, 12 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 July 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's election without traverse of in the reply filed on 10-18-05 is acknowledged. Of note, claim 53 was not included in species IL, which was not selected by the Applicant. The Examiner apologizes for any confusion.

In that regard, Claims 5, 7, 10, 13 and 15 – 55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10-18-05.

The requirement is still deemed proper and is therefore made FINAL.

### ***Information Disclosure Statement***

The information disclosure statement filed 3-5-02 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed and NPL that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The phrase "related information" in claim 2 is a relative phrase, which renders the claim indefinite. The phrase "related information" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For examination purposes, the phrase "related information" was treated as the product(s) related accessories selected by the customer.

The word "candidate" in claim 2 is a relative word, which renders the claim indefinite. The word "candidate" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For examination purposes, the word "candidate" was treated as the product(s) being ordered by the customer.

The word "booked" in claims 3, 6, 8 – 9, 12 and 14 is a relative word, which renders the claim indefinite. The word "booked" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes, the word "booked" was treated as the customer clicking on the order button.

The word "unbooked" in claims 4 and 11 is a relative word, which renders the claim indefinite. The word "unbooked" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes, the word "unbooked" was treated as the customer clicking on the cancel button.

Claim 3 as well as claims 9, 11 and 14 recites the limitation "sale store" in these claims. There is insufficient antecedent basis for this limitation in the claims.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 2 – 3, 6, 8 – 9, 12, 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Henson (US 6,167,383).**

Regarding claim 1, Henson teaches a commodity selling apparatus for accepting an order of a commodity responsive to a request by a customer to purchase the commodity over a network and for directly shipping the ordered commodity to said customer, comprising:

order information acquisition means for acquiring the order information, prepared on accepting the request to purchase the commodity from the customer, over said network; and commodity shipping command means for commanding the shipping of the commodity ordered to said customer based on said order information acquired by said order information acquisition means (see at least Abstract, Col 1, lines 60 – 63, Col 3, lines 31 – 32 and Figures 1, 2 and 3C).

Please note that the Examination of the listed claims was based on the fact that 35 USC 112, 6<sup>th</sup> paragraph was not invoked. Also and for Examination purposes, “sales store” was treated as equivalent to separate virtual stores for each customer (see at least Col 14, lines 35 – 61). Finally as noted above, the use of these words/phrase maybe a result of translation, which hampers the determining the metes and bounds of the claims.

Regarding claim 2, Henson teaches a commodity selling apparatus further comprising: related information transmission means for transmitting the related information of said commodity as an order candidate over said network; said order information acquisition means acquiring the order information over said network following transmission of said

related information by said related information transmission means (Abstract and Figures 1, 2 and Col 3, lines 45 – 54).

Regarding claim 3, Henson teaches a commodity selling apparatus wherein said related information transmission means includes delivery term presenting means for presenting the term of delivery of the commodity and the quantity of possible orders under said term of delivery, in a confirmable form, responsive to a request from said sale store, to said sale store over said network; said order information acquisition means acquiring, from said sale store, the order information prepared on accepting the request to purchase the commodity from the customer in accordance with a delivery term presented by said delivery term presenting means, over said network; said commodity shipping command means commanding the shipping to said customer of the commodity booked on the basis of the order information acquired by said order information acquisition means, within the term of delivery presented by said delivery term presenting means (Col 7, lines 1 – 21 and Figure 9).

Regarding claim 6, Henson teaches a commodity selling apparatus wherein said order information acquisition means acquiring the information specifying a commodity as the order information and the information pertinent to the shipping destination of said commodity; said commodity shipping command means transmitting the information pertinent to the shipping destination of said commodity along with a command for shipping the booked community (Figure 9).

Regarding claim 8, Henson teaches a commodity selling apparatus wherein said related information transmission means including delivery term presenting means for presenting the term of delivery of a commodity and the quantity of possible orders under said delivery term in a confirmable form to a booking terminal connected over a network to said related information transmission means responsive to a request from said booking terminal (Figure 9); said order information acquisition means acquiring from said booking terminal the order information formulated on the basis of the request by a customer to purchase a commodity under a term of delivery presented by said delivery term presenting means (Figure 9); said commodity shipping command means commanding the shipping of the booked commodity to said customer within the term of delivery presented by said delivery term presenting means, based on the order information acquired by said order information acquisition means (Abstract and Figure 9).

Regarding claim 9, Henson teaches a commodity selling apparatus according wherein said commodity is formed by a plurality of individual commodities (Figure 3A); said related information transmission means including delivery term presenting means for presenting, responsive to a request from said sale store, the term of delivery of said individual commodities and the quantity of possible orders under said delivery term in a confirmable form to said sale store (Figure 9); said order information acquisition means acquiring from said sale store the order information formulated on the basis of the request from a customer to purchase the commodity under the term of delivery presented by said delivery term presenting means (Abstract and Figure 9); said



commodity shipping command means commanding the booked commodity to be shipped to said customer within the term of delivery presented by said delivery term presenting means on the basis of the order information acquired by said order information acquisition means (Figure 9).

Regarding claim 12, Henson teaches a commodity selling apparatus according wherein said order information acquisition means acquires the information specifying the individual commodity forming a commodity as the order information and the information pertinent to the shipping destination of said commodity; said commodity shipping command means transmitting the information pertinent to the shipping destination of said commodity along with a shipping command for the booked commodity (Figure 9).

Regarding claim 14, Henson teaches a commodity selling apparatus according wherein said commodity is formed by a plurality of individual commodities; said related information transmission means including delivery term presenting means for presenting, responsive to a request from a booking terminal connected over a network, the term of delivery of said individual commodities and the quantity of possible orders under said delivery term, in a confirmable form to said sale store; said order information acquisition means acquiring from said booking terminal the order information formulated on the basis of the request accepted from a customer to purchase the commodity under the term of delivery presented by said delivery term presenting means; said commodity shipment command means commanding the booked commodity to be shipped to said customer within the term of delivery presented by said delivery term presenting means

on the basis of the order information acquired by said order information acquisition means (Figure 3A and Figure 9).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henson (US 6,167,383) in view of Bellini (US 5,974,395).**

Henson substantially discloses and teaches the Applicant's invention.

However, Henson does not specially disclose and teach a commodity selling apparatus further comprising: production quantity acquisition means for acquiring the total production quantity per preset period of time of respective commodities, produced in accordance with a production schedule drafted under a preset production schedule sequence; said delivery term presenting means presenting the delivery term as said preset period of time, with an unbooked fraction of the total production quantity during said preset time period as the quantity of possible orders.

On the other hand and regarding claim 4, Bellini teaches a commodity selling apparatus further comprising: production quantity acquisition means for acquiring the total production quantity per preset period of time of respective commodities, produced in accordance with a production schedule drafted under a preset production schedule sequence; said delivery term presenting means presenting the delivery term as said preset period of time, with an unbooked fraction of the total production quantity during said preset time period as the quantity of possible orders (see at least Abstract, Col 2, lines 55 – 67, Col 3, lines 9 – 15, Col 5, lines 36 – 59 and Figure 2).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the selling apparatus of Henson with the selling apparatus of Bellini to have enabled a selling apparatus for a commodity selling apparatus further comprising: production quantity acquisition means for acquiring the total production quantity per preset period of time of respective commodities, produced in accordance with a production schedule drafted under a preset production schedule sequence; said delivery term presenting means presenting the delivery term as said preset period of time, with an unbooked fraction of the total production quantity during said preset time period as the quantity of possible orders. Henson discloses the claims limitations as recited in claim 1. In turn, Bellini discloses a commodity selling apparatus further comprising: production quantity acquisition means for acquiring the total production quantity per preset period of time of respective commodities, produced in accordance with a production schedule drafted under a preset production schedule sequence; said

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delivery term presenting means presenting the delivery term as said preset period of time, with an unbooked fraction of the total production quantity during said preset time period as the quantity of possible orders (see at least Abstract, Col 2, lines 55 – 67, Col 3, lines 9 – 15, Col 5, lines 36 – 59 and Figure 2). Thereby, one of ordinary skill in the art would have been motivated to extend the Henson with a commodity selling apparatus further comprising: production quantity acquisition means for acquiring the total production quantity per preset period of time of respective commodities, produced in accordance with a production schedule drafted under a preset production schedule sequence; said delivery term presenting means presenting the delivery term as said preset period of time, with an unbooked fraction of the total production quantity during said preset time period as the quantity of possible orders. In this manner, the manufacturer of the product will ensure timely production and delivery of products.

**Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henson (US 6,167,383) in view of Kennedy (US 6,188,989 B1).**

Henson substantially discloses and teaches the Applicant's invention.

However, Henson does not specifically disclose and teach a commodity selling apparatus according further comprising: production quantity acquisition means for acquiring the total production quantity per preset time period for each individual

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commodity produced in accordance with a production schedule drafted under a preset production schedule sequence; and sale quantity allocation means for deciding an allocation quantity to each sale store corresponding to a fraction of the total production quantity per preset time period as obtained by said production quantity acquisition means; said delivery term presenting means presenting said preset time period as the term of delivery, with an unbooked fraction of said allocation quantity to the sale store which has made said purchase request, as the quantity of possible orders during said preset time period, in a confirmable form to said sale store.

On the other hand and regarding claim 11, Kennedy teaches a commodity selling apparatus according further comprising: production quantity acquisition means for acquiring the total production quantity per preset time period for each individual commodity produced in accordance with a production schedule drafted under a preset production schedule sequence; and sale quantity allocation means for deciding an allocation quantity to each sale store corresponding to a fraction of the total production quantity per preset time period as obtained by said production quantity acquisition means; said delivery term presenting means presenting said preset time period as the term of delivery, with an unbooked fraction of said allocation quantity to the sale store which has made said purchase request, as the quantity of possible orders during said preset time period, in a confirmable form to said sale store (see at least Abstract, Col 2, lines 37 – 45, Col 3, lines 35 – 41 and Col 5, lines 38 – 46).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the apparatus of Henson with the apparatus of Kennedy to have enabled an apparatus for a commodity selling apparatus according further comprising: production quantity acquisition means for acquiring the total production quantity per preset time period for each individual commodity produced in accordance with a production schedule drafted under a preset production schedule sequence; and sale quantity allocation means for deciding an allocation quantity to each sale store corresponding to a fraction of the total production quantity per preset time period as obtained by said production quantity acquisition means; said delivery term presenting means presenting said preset time period as the term of delivery, with an unbooked fraction of said allocation quantity to the sale store which has made said purchase request, as the quantity of possible orders during said preset time period, in a confirmable form to said sale store. Henson teaches the claims limitations as recited in claim 9. In turn, Kennedy teaches an apparatus for a commodity selling apparatus according further comprising: production quantity acquisition means for acquiring the total production quantity per preset time period for each individual commodity produced in accordance with a production schedule drafted under a preset production schedule sequence; and sale quantity allocation means for deciding an allocation quantity to each sale store corresponding to a fraction of the total production quantity per preset time period as obtained by said production quantity acquisition means; said delivery term presenting means presenting said preset time period as the term of delivery, with an unbooked fraction of said allocation quantity to the sale store which has made said

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purchase request, as the quantity of possible orders during said preset time period, in a confirmable form to said sale store (see at least Abstract, Col 2, lines 37 – 45, Col 3, lines 35 – 41 and Col 5, lines 38 – 46). Thereby, one of ordinary skill in the art would have been motivated to extend the apparatus of Henson with an apparatus for a commodity selling apparatus according further comprising: production quantity acquisition means for acquiring the total production quantity per preset time period for each individual commodity produced in accordance with a production schedule drafted under a preset production schedule sequence; and sale quantity allocation means for deciding an allocation quantity to each sale store corresponding to a fraction of the total production quantity per preset time period as obtained by said production quantity acquisition means; said delivery term presenting means presenting said preset time period as the term of delivery, with an unbooked fraction of said allocation quantity to the sale store which has made said purchase request, as the quantity of possible orders during said preset time period, in a confirmable form to said sale store.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. "Aspect Bought For 9.3 Billion By Dallas Firm"; Kelly Zito; San Francisco Chronicle; Mar 14, 2000 and "i2: The early Bird Gets The Market"; Steven Brull; Business Week; Oct 25, 1999.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **571.272.6761**.

The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **571.272.7159**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

**Alexandria, Va. 22313-1450**

or faxed to:

**571-273-8300**

[Official communications; including  
After Final communications labeled  
"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

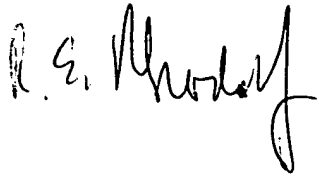
For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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RER

A handwritten signature in black ink, appearing to read "R. S. Mordley". The signature is written in a cursive style with a large, looped "M" and a trailing flourish.